HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY, AND ADULT-AT-RISK WELFARE CODE

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TABLE OF CONTENTS

Chapter I – General Provisions, Policies, and Definitions
1. Authority 2
2. Purpose 3
3. Scope 3
4. Declaration of Policy 3
5. Definitions 3
6. Ho-Chunk Nation Division of Children and Family Services Adult-at-Risk Prevention and Protection Workers 7
7. Confidentiality and Penalty 8

Chapter II – Reporting
8. Duty to Report Abuse, Neglect, Self-Neglect and Exploitation of an Adult-at-Risk 9
9. Anonymous Reports 10
10. Immunity from Liability 10
11. Civil Violation and Penalty for Failing to Report 10
12. Civil Violation and Penalty for a Report Made in Bad Faith 10
13. Reports 10

Chapter III – Rights of Parties
17. Rights of Adult-at-Risk 11
18. Rights of the Accused 11

Chapter IV – Investigations
14. Investigations 12
15. Interference with Investigation and Retaliation – Civil Penalty 13
16. Criminal Investigation 13

Chapter V – Court Process
19. Jurisdiction 13
20. Petition 14
21. Hearing 15

Chapter VI – Court Orders
22. Orders 16
23. Adult-at-Risk Protection Order 16
24. Modification or Termination 17
25. Violation of Protection Orders 17

Chapter VII- Adult-at-Risk Protective Restraining Orders- Civil Process

26. Purpose of Adult-at-Risk Protective Civil Restraining Orders 17
27. General Procedure 18
28. Petition 18
29. Temporary Adult-at-Risk Protective Restraining Order 19
30. Adult-at-Risk Protective Restraining Order 21
31. Request to Modify Order by Respondent Due to Lack of Notice 22
32. Motion to Extend/Terminate/Modify Order 22

Chapter VIII- Contempt and Severability
33. Disobedience- Contempt 23
34. Severability 24

CHAPTER I – GENERAL PROVISIONS, POLICIES, AND DEFINITIONS

1. **Authority**.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

2. **Purpose.** The purpose of this Act is to establish Tribal law to protect any adult 18-59 who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or exploitation.

3. **Scope.** This Act shall cover abuse, neglect, self-neglect, and exploitation of Adults-at-Risk.

4. **Declaration of Policy.**

a. The dignity and self-reliance of the Nation's Adult-at-Risk shall be acknowledged and respected by family members, the community, and employees of the Nation. The rights of each Adult-at-Risk shall be protected.

b. When the well-being and safety of the Adult-at-Risk is threatened by abuse, neglect, self-neglect or exploitation, it is a serious matter deserving of the Nation's recognition, attention and intervention.

c. The Nation shall establish services and assure their availability to all Adult-at-Risk when in need of them and to place the least possible restrictions on personal liberty and exercise of rights consistent with due process and protection from abuse, neglect, self-neglect, and exploitation.

d. The Legislature shall appropriate and provide adequate funding support as determined by the CFS program's needs to ensure the health, safety, and welfare of the Nation's Adults-at-Risk.

5. **Definitions.** Terms used in this Act have the following meaning:

a. "Abandonment" means the desertion or willful forsaking of an Adult-at-Risk which may include foregoing a duty of care.

b. "Abuse" means one or more of the following:

(1) The intentional or negligent infliction of bodily harm, unreasonable confinement, or intimidation causing mental anguish by any person, including a person having a special relationship with the Adult-at-Risk e.g., a spouse, child, or other relative, or a caretaker; or

(2) The infliction of physical, emotional, or mental injury on an Adult-at-Risk, or sexual abuse or exploitation of an Adult-at-Risk; or

(3) Attempting to cause or causing physical harm, bodily injury, or assault on an Adult-at-Risk or the Adult-at-Risk's family or caretaker; or

(4) Subjecting an Adult-at-Risk to deliberate verbal abuse, this may include: insulting, frightening, humiliating, threatening, and/or demeaning an Adult-at-Risk; or

(5) However, no person shall be deemed to be abused for the sole reason they are being furnished non-medical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment, or if the wishes of an Adult-at-Risk's Do Not Resuscitate (DNR) or Power of Attorney (POA) are being followed.

c. "Adult At-Risk" means any adult 18-59 who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or exploitation.

d. "Adult Prevention and Protection Social Worker" means an employee of the Nation who is employed to help Adult-at-Risk.

e."Caretaker" can mean, but is not limited to, the following:

(1) An individual that is assisting person with basic daily cares, finances and other needs required for the Adult-at-Risk each day to maintain their personal level of functioning with dignitary.

(2) A non-paid family member, friend, neighbor or paid individual who is working directly for the person or through an agency to provide services or resources to an Adult-at-Risk;

(3) An institution or agency which voluntarily or is required by Tribal law or custom, state or federal law, or contract to provide care, services, or resources to an Adult-at-Risk;

(4) An employee of any institution or agency specified in paragraph (3), above.

f. "Case Management" means the coordination of services provided to the Adult-at-Risk by

the Adult Prevention and Protection Social Worker.

g.“Court” means the Ho-Chunk Nation Trial Court.

h.“Emergency” is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.

i.“Emotional Abuse” means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten frighten, or otherwise harass the individual to whom the conduct or language is directed.

j.“Exploitation” means the act of taking unjust advantage of an Adult-at-Risk financially or otherwise.

k.“Family” means all of the customary family relationships recognized by the Nation, including extended family relationships.

l.“Guardian ad Litem” means a person appointed by the Court to represent the best interests of the Adult-at-Risk.

m. “Guardian” means a person appointed by the Court to manage the income and assets of an at-risk individual and provide for the essential requirements for health and safety and the personal needs of an individual found to be incompetent or a spendthrift.

n. “Guardian of the estate” means a person appointed by the Court to represent the best interest of the Adult-at-Risk.

o. “Guardian of the person” means a guardian appointed by the Court to ensure the health and safety of the personal needs of an individual found to be an incompetent or a spendthrift.

p.“Good Faith” means an honest belief or purpose and the lack of intent to defraud.

q.“Least Restrictive Alternative” means an approach which allows an Adult-at-Risk independence and freedom from intrusion consistent with the Adult-at-Risk’s needs by requiring that the least disruptive method of intervention be used when intervention is necessary to protect the Adult-at-Risk from harm.

r.“Neglect” means any of the following:

(1) Failure of a caregiver, as evidence by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual physical or mental health; or

(2) The interference with the delivery of necessary services or resources; or

(3) The failure to report abuse, neglect, self-neglect or exploitation of an Adult-at-Risk; or

(4) The failure to provide services or resources essential to the Adult-at-Risk’s practice of his or her customs, traditions, or religion; or

(5) The abandonment of an Adult-at-Risk by his or her family, guardian, or caretaker.

s.“Physical Abuse” means the intentional or reckless infliction of bodily harm.

t.“Power of Attorney” means a written document signed by an individual, including an Adult-at-Risk and notarized giving another person the power to act in conducting the Adult-at-Risk’s business in the name of the Adult-at-Risk. An ordinary Power of Attorney is revocable and automatically terminates upon the death or incapacity of the principle unless the Power of Attorney is a Durable Power of Attorney. There are four main types of powers of attorney:

(1) A Power of Attorney for Finances and Property covers all the Adult-at-Risk’s business activities, for example signing papers, title documents, contracts, or bank accounts;

(2) A Limited Power of Attorney grants powers limited to specific matters, for example selling a particular piece of real estate or handling specific bank accounts;

(3) A Power of Attorney for Health Care grants powers to individuals to make health care decisions on an Adult-at-Risk’s behalf should they become incapacitated.

(4) Durable Power of Attorney is one that remains in effect during the Adult at Risk’s incompetency. A Heath Care Power of Attorney is an example of a Durable Power of Attorney.

u.“Prevention/Protective Services” may include any of the following:

(1) Outreach; or

(2) Identification of individuals in need of services; or

(3) Information and referral for services necessary to assist the Adult-at-Risk; or

(4) Coordination of services for individuals; or

(5) Case Management.

v.“Retaliation” means taking any action against an individual for reporting Adult-at-Risk abuse, neglect, self-neglect, or exploitation, such as:

(1) Threatening the person(s); or

(2) Causing bodily harm; or

(3) Causing termination, suspension, or reprimand by the employer; or

(4) Damaging real or personal property; or

(5) Defaming (libel and/or slander) the person(s); or

(6) Harassing the person(s).

w.“Self-neglect” means a significant danger to an Adult-at-Risk’s physical or mental health because the Adult-at-Risk is responsible for his or her own care but fails to or is unwilling to obtain adequate care, including, food, shelter, clothing, or medical or dental care.

x. “Sexual Abuse” means abuse that consists of any kind of non-consensual sexual contact, including unwanted touching, sexual assault, and battery. It also includes unreasonable behavior toward an Adult-at-Risk of a sexual nature that causes physical, emotional, or

mental injury to an Adult-at-Risk.

y."Verbal Abuse" means abuse that stems from deliberate oral statements made toward an Adult-at-Risk which are meant to insult, frighten, humiliate, threaten, and/or to demean an Adult-at-Risk.

6. **Ho-Chunk Nation Division of Children and Family Services Adult Prevention and Protection Social Workers.**

a. Adult Prevention and Protection Social Workers shall be employed by CFS and shall execute the duties and powers enumerated in this Act.

b. CFS may cooperate with such state and community agencies as necessary to achieve the purposes of this Act. CFS may negotiate working agreements with other jurisdictions.

c. CFS shall maintain Standard Operating Procedures (SOPs) which implement(s) this Act.

d. Duties. An Adult Prevention and Protection Social Worker:

(1) Will receive a case from an assigning supervisor;

(2) Will initiate an investigation within twenty-four (24) business hours of the case assignment of all reported cases of the abuse, neglect, self-neglect, or exploitation of an Adult-at-Risk;

(3) Will offer prevention/protection services to an Adult-at-Risk;

(4) Will prepare a plan with the Adult-at-Risk to facilitate services which provide the least restrictive alternatives consistent with the Adult-at-Risk's needs;

(5) Will inform the Adult-at-Risk the following:

(a) About the investigation;

(b) That before seeking entry into their home, the Adult-at-Risk has the right to refuse to allow an Adult Prevention and Protection Social Worker into their home; the Adult Prevention and Protection Social Worker shall also inform the Adult-at-Risk of the right of the Adult Prevention and Protection Social Worker to seek a warrant to gain access;

(c) That the Adult-at-Risk has the right to refuse services; and

(d) That the Adult-at-Risk or the Adult Prevention and Protection Social Worker can contact the local jurisdiction where the suspected abuse, neglect, self-neglect, or exploitation of an Adult-at-Risk occurred about a possible criminal offense.

7. **Confidentiality and Penalty.**

a. Name of Reporter. The name of the person who reports abuse, neglect, self-neglect, or exploitation as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or unless the release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the Adult-at-Risk is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent as determined necessary to protect the Adult-at-Risk.

b. Department Records. Records of an investigation of Adult-at-Risk abuse are confidential to the Social Services case workers and the Department of Justice Attorneys assigned to the case unless ordered to be released pursuant to a court Order. Such records shall be open only to the Adult-at-Risk, unless the Adult-at-Risk consents to the release in writing. If the Executive Director of the Ho-Chunk Nation Department of Social Services, law enforcement officers, Court officials, coroner or medical examiner, or any other person has reason to believe that an Adult-at-Risk died as the result of abuse or neglect, the Court shall determine who has reasonable cause to have access to such records.

c. Court Records. Records of a Court hearing regarding Adult-at-Risk abuse, neglect, self-neglect, or exploitation are confidential. The Court shall keep court records as may be required by the Judge. Records in Adult-at-Risk cases shall be withheld from public inspection, but the Court records shall be open to inspection by the Adult-at-Risk, and either the Adult-at-Risk's private attorney or CFS if the case is brought by CFS.

d. Penalty. Any person who violates any provision of this section shall be subject to a civil penalty of up to $100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Nation, the person shall be subject to appropriate disciplinary action as allowed in the Nation's employment laws.

CHAPTER II - REPORTING

8. **Duty to Report Abuse, Neglect, Self-Neglect, and Exploitation of an Adult-at-Risk.** Any person who has reasonable cause to suspect that an Adult-at-Risk has been abused, neglected, self-neglected, or exploited shall immediately report the abuse, neglect, self-neglect, or exploitation to the CFS Intake staff unless they have a privileged relationship with their patient or client. An individual with a privileged relationship must disclose information about their patient or client to appropriate officials if there is an emergency situation. The following individuals have a special duty under Ho-Chunk law and/or State of Wisconsin law to reporting abuse, neglect, self-neglect, or exploitation:

a. The Adult-at-Risk's family or caretaker;

b. Any employee or elected official of the Nation;

c. Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider;

d. Psychiatrist, psychologist, or psychological assistant;

e. Any licensed or unlicensed social worker, professional counselor, or marriage and family therapist;

f. Person employed in the mental or behavioral health profession;

g. Person employed as a physical therapist, occupational therapist, or the assistants of such therapists;

h. Law enforcement officer, probation officer, worker in a detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial Orders;

i. Judge, attorney, court counselor, clerk of court, or judicial system official or staff.

9. **Anonymous Reports.** Except for those persons in Section 8 b-i, persons reporting Adult-at-Risk abuse, neglect, self-neglect, or exploitation may remain anonymous, except in the event of a court Order pursuant to Chapter I, Section 7(a) of this Act.

10. **Immunity from Liability.** Any person who in good faith reports suspected abuse, neglect, self-neglect, or exploitation of an Adult-at-Risk shall be immune from any legal action based on that person's report.

11. **Civil Violation and Penalty for Failing to Report.** Any person who is required by this Act and under the jurisdiction of the Ho-Chunk Nation to report suspected Adult-at-Risk abuse,

neglect, self-neglect, or exploitation and fails to do so is subject to civil penalty not to exceed $2,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report, and failed to do so, as required by this Act. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Adult-at-Risk for damages suffered as a result of the failure to report, notwithstanding any determination by the Court that the person failing to report violated this Act.

12. **Civil Violation and Penalty for a Report Made in Bad Faith.** Any person who makes a report of suspected abuse, neglect, self-neglect, or exploitation knowing it to be false is subject to a civil penalty not to exceed $2,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person making the report knew the report to be false. Any person making a false report is subject to any civil suit for damages brought by or on behalf of the person(s) named as the Accused in the false report.

13. **Reports.** Reports of suspected Adult-at-Risk abuse, neglect, self-neglect, or exploitation shall be made to the CFS Intake Staff. The CFS Intake Staff member who takes an oral report shall immediately complete a written report. Anonymous reports shall be investigated as required by this Act. The following information should be part of the written report:

a. The Adult-at-Risk's name, address or location, and telephone number;

b. The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Adult-at-Risk;

c. The nature and degree of the limitations of the Adult-at-Risk;

d. The name, address or location, and telephone number of the Adult-at-Risk's caretaker;

e. The name, address or location, and telephone number of witness(s);

f. A description of the acts which are reported as abusive, neglectful, or exploitive;

g. Any other information that the reporter believes might be helpful in establishing abuse, neglect, self-neglect, or exploitation;

h. The written report should contain the name, address, and telephone number of the reporter for the purpose of CFS follow-up. Rules of anonymity shall be followed pursuant to Section 9.

CHAPTER III – RIGHTS OF PARTIES

14. **Rights of Adult-at-Risk.**

a. An Adult-at-Risk has the right to be informed about an Adult-at-Risk abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but not later than one (1) business day after the investigation begins.

b. An Adult-at-Risk has the right to refuse to accept adult prevention and protective services (even if there is good cause to believe that the Adult-at-Risk has been or is being abused, neglected, self-neglected, or exploited) provided that the Adult-at-Risk is able to care for himself or herself and/or has the capacity to understand the nature of the services offered.

c. An Adult-at-Risk has the right to refuse an Adult Prevention and Protection Social Worker entrance into their home and the Adult Prevention and Protection Social Worker shall so inform the Adult-at-Risk of this right before seeking entry. The Adult Prevention and Protection Social Worker shall also inform the Adult-at-Risk of the right of the Adult Prevention and Protection Social Worker to seek a warrant to gain access.

d. The Adult-at-Risk has the right to be represented by counsel at his or her own expense at all proceedings.

(1) If the Adult-at-Risk seeks to proceed independently, then the Adult-at-Risk may retain private counsel to represent himself or herself at his or her own cost or proceed without counsel (pro se).

(2) If the Adult-at-Risk seeks to have the assistance of the CFS Adult Prevention and Protection Program in filing the Petition, then CFS and the DOJ shall make a determination on whether a legal claim exists and then make a determination on how to proceed.

15. **Rights of the Accused.**

a. The accused may refuse for themselves, but not for the Adult-at-Risk, services offered by the CFS Adult Prevention and Protection Program to help remedy the alleged abuse, neglect, or exploitation.

b. The accused may refuse to allow an Adult Prevention and Protection Social Worker into their home and the Adult Prevention and Protection Social Worker shall so inform the alleged accused of this right before seeking entry. The Adult Prevention and Protection Social Worker shall also inform the accused of the right of the Adult Prevention and Protection Social Worker to seek a warrant to gain access.

c. The accused has the right to be represented by counsel at his or her own expense at all proceedings.

CHAPTER IV – INVESTIGATION

16. **Investigations.**

a. The Adult Prevention and Protection Social Worker shall initiate an investigation within one (1) business day of receipt of a report.

b. Written Investigative Report.

(1) A written investigative report shall be prepared and filed with the CFS Adult Prevention and Protection Program. The investigative report will remain on file for a period of five (5) years, even if it is determined that there is insufficient evidence to pursue any legal action.

(2) When a report of abuse is found to have been made in bad faith, the investigative report shall be held and maintained as an inactive file for possible use in a civil violation investigation or proceeding pursuant to this Act.

(3) The investigative report shall contain the pertinent information obtained during the investigation, including the results of the Adult Prevention and Protection Social Worker's interview, observations and assessments, and other facts.

(4) If substantiated, CFS may mediate a resolution of the presented situation or may forward the matter to the Ho-Chunk Nation Department of Justice (DOJ) for legal action.

c. Subpoena of Medical and Financial Records. The Court may issue subpoenas for the release of medical records and financial records upon motion for expedited consideration by the DOJ in order to facilitate investigations of reported Adult-at-Risk abuse, neglect, self-neglect, or exploitation. Upon hearing evidence, the Court must find reasonable grounds to believe that Adult-at-Risk abuse, neglect, self-neglect, or exploitation is occurring or has occurred in order to issue a subpoena.

17. **Interference with Investigation and Retaliation – Civil Penalty.**

a. No person shall interfere intentionally with a lawful investigation of suspected Adult-at-Risk abuse, neglect, self-neglect, or exploitation.

b. No person shall retaliate by any means against any person who has made a good faith report of suspected Adult-at-Risk abuse, neglect, self-neglect, or exploitation or who cooperates with an investigation of suspected Adult-at-Risk abuse, neglect, self-neglect, or exploitation.

c. Any person who violates the provisions of paragraph a or b above shall be stopped from partaking in such activity and shall be subject to a civil penalty of up to $2,000 per occurrence. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that either interference or retaliation as set out in this section occurred. Further,

notice of such determination shall be provided to the person's employer and appropriate licensing agencies. If the person violating the above provisions is an employee of the Nation, appropriate disciplinary action shall be imposed consistent with the Nation's Employment Relations Act, 6 HCC § 5.

18. **Criminal Investigation.** Any investigation and any other procedure allowed under this Act may continue even if a criminal investigation is undertaken. The CFS Adult Prevention and Protection Program shall provide its cooperation with law enforcement to ensure the criminal investigation is not compromised.

CHAPTER V- COURT PROCESS

19. **Jurisdiction.**

The Ho-Chunk Nation Trial Court is vested with the fullest jurisdiction permissible under applicable law. Pursuant to Article VII, section 5 (a) of the Ho-Chunk Nation Constitution, the Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity and (b) The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court.

Personal jurisdiction includes, but is not limited to the following people:

(1) Members of the Ho-Chunk Nation; or

(2) Individuals personally served with a Petition or Summons on the Nation's lands; or

(3) Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction; or

(4) Any individual who resides on the Nation's lands with a Ho-Chunk Adult-at-Risk who is the subject of the proceeding; or

(5) Any individual who enters the Nation's lands to transact with a Ho-Chunk Adult-at-Risk

or obtains access to a Ho-Chunk Adult-at-Risk's personal property who is the subject of the proceeding.

a. In every action under this Act, the Court shall retain continuing, exclusive jurisdiction over the Adult-at-Risk to the fullest extent permitted by law.

20. **Petition.**

a. An Adult-at-Risk may wish to Petition the matter before the Court under the Adult-at-Risk Protection Act. The Adult-at-Risk has the option of proceeding in one of two ways:

(1) The Adult-at-Risk may file the Petition on his or her own independently. The Adult-at-Risk shall file the Petition and present facts on his or her own behalf. The Adult-at-Risk may do this through the use of private counsel at his or her own expense or without counsel (pro se); or

(2) The Adult-at-Risk may seek to be assisted by and through CFS. If mediation or other non-legal recourse is not successful or feasible, then the DOJ shall file the Petition and present facts on behalf of the Nation for legal proceedings authorized or required by this Act, provided the case is brought by the CFS Adult Prevention and Protection Program.

b. CFS may file a Petition on behalf of the Adult-at-Risk on its own initiative.

c. The Petition shall contain the following:

(1) The name of the Adult-at-Risk and the name of interested parties, including guardian or Power of Attorney, if any. A supplemental document shall be filed with the Court containing the address of where the petitioner would like to receive notices from the court, the petitioner's telephone number(s), and e-mail address if available. This information shall be kept confidential.

(2) An allegation that:

(a) The respondent has abused, neglected, or exploited an Adult-at-Risk;

(b) The respondent has threatened to engage in abuse, neglect, or exploitation of an Adult-at-Risk;

(c) The Adult-at-Risk is self-neglecting himself or herself and intervention is necessary to protect the Adult-at-Risk.

(3) The name, mailing address, physical address, age of the accused, and his or her relationship to the Adult-at-Risk.

(4) A statement of facts that support the allegations presented.

d. Service of Process. Notice of the Adult-at-Risk Protection proceeding shall be made by personal service of the Petition and Summons at least ten (10) days prior to the Hearing on the Petition.

21. **Hearing.**

a. Hearing. A hearing on a Petition authorized or required by this Act shall be conducted with the purpose of protecting the Adult-at-Risk only when necessary and only to the extent shown by the facts and using the least restrictive alternatives.

(1) All rights, as set out specifically in this Act shall be enforced strictly during all proceedings.

(2) No hearing shall be held unless notice has been given to the Adult-at-Risk and other interested parties.

(3) The Adult-at-Risk and all other interested parties shall have the right and opportunity to be heard fully and to present evidence.

b. Timing. A Hearing on an Adult-at-Risk Protection Petition shall be held within forty-five (45) days of the filing of the Petition. If emergency protection is necessary an Adult-at-Risk Protective Restraining Order may be sought pursuant to the requirements within this Act.

c. Court Proceedings. A proceeding held pursuant to this Act will be closed and confidential. Persons who may attend are the parties, representatives of CFS, necessary Court officials, and attorneys for the parties. Other persons may appear only to testify.

d. Burden of Proof. The petitioner must provide one or more of the reasons listed as justification to bring the matter before the Court. The determination shall be made only after petition, notice, hearing, and proof by clear and convincing evidence of abuse, neglect, self-neglect, or exploitation.

CHAPTER VI- COURT ORDERS

22. **Orders.**

a. Adult-at-Risk Protection Order. The Court may rule from the bench and then issue a written statement of its findings in support of any Adult-at-Risk Protection Order within thirty (30) days of the Hearing.

b. No Adult-at-Risk Protection Order shall be issued until ten (10) days after the Petition has been served on all parties except for Restraining Orders issued under paragraph 30.

23. **Adult-at-Risk Protection Order.**

a. If the Court determines that an Adult-at-Risk has been abused, neglected, self-neglected, or exploited, the Court shall issue an Adult-at-Risk Protection Order which provides appropriate protection for the Adult-at-Risk. Such protection may include, but is not limited to the following:

(1) Removing the individual(s) who abused, neglected, or exploited an Adult-at-Risk from the Adult-at-Risk's home immediately; or

(2) Having CFS facilitate a move for the Adult-at-Risk from the place where the abuse, neglect, self-neglect, or exploitation has taken or is taking place; or

(3) Restraining the individual(s) who abused, neglected, or exploited the Adult-at-Risk from having any form of contact with the Adult-at-Risk; or

(4) Restraining the individual(s) who has abused, neglected, or exploited the Adult-at-Risk from continuing such acts; or

(5) Requiring an Adult-at-Risk's family or caretaker or any other person with a fiduciary duty to the Adult-at-Risk to account for the Adult-at-Risk's funds and property; or

(6) Requiring any individual(s) who has abused, neglected, or exploited an Adult-at-Risk to pay restitution to the Adult-at-Risk for damages resulting from that individual(s)'s wrongdoing; or

(7) Appointing a representative or a guardian ad litem for the Adult-at-Risk; or

(8) Recommending that a representative payee be named; or

(9) Ordering compensation to be paid to the Adult-at-Risk. Said debt shall be garnished from the individual(s)'s per capita pursuant to the Nation's Claims Against Per Capita Ordinance, 2 HCC § 8, or through a general garnishment Order.

24. **Modification or Termination.**

a. If modification or termination of the Order is needed a Motion shall be filed by a party seeking the modification or termination.

b. Notice shall then be provided for the Motion Hearing. At the Motion Hearing the burden of proof will be on the motioning party to prove by clear and convincing evidence that such a modification or termination is in the best interests of the Adult-at-Risk or necessary for the protection of the Adult-at-Risk.

25. **Violation of Protection Orders.** Violation of Court Protection Orders by a respondent may be punished by a fine of not more than $2,000. Said debt shall be a debt owed to the Nation and shall be collected as such pursuant to the Claims Against Per Capita Ordinance, 2 HCC § 8, or by a general garnishment Order.

CHAPTER VII- ADULT-AT-RISK PROTECTIVE RESTRAINING ORDERS – CIVIL PROCESS

26. **Purpose of Adult-at-Risk Protective Civil Restraining Orders.**

a. The purpose of authorizing Adult-at-Risk Protective Restraining Orders is to provide Adult-at-Risk with a process for obtaining restraining orders independent of contacting law enforcement officers to report a crime. Individuals applying for an Adult-at-Risk Protective Restraining Order should be referred to law enforcement in the event that an unreported crime has been committed.

b. The purpose of authorizing emergency Adult-at-Risk Protective Restraining Orders to be issued without prior notice to the respondent is to insure the immediate protection of the Adult-at-Risk.

27. **General Procedure.**

a. No complaint need be filed and summons served in order to obtain an Adult-at-Risk Protective Restraining Order. An action under this section may be commenced only by a Petition being served on the respondent.

b. No filing fees are required for an Adult-at-Risk Protective Restraining Order.

c. The following people may file a Petition for an Adult-at-Risk Protective Restraining Order:

(1) Any person who alleges that he or she is or has been a victim of Adult-at-Risk abuse, neglect, or exploitation may file a Petition;

(2) Family or household members may file a Petition on behalf of an Adult-at-Risk who has been a victim of Adult-at-Risk abuse, neglect, or exploitation;

(3) CFS may file a Petition for an Adult-at-Risk Protective Restraining Order on behalf of an Adult-at-Risk who has been a victim of Adult-at-Risk abuse, neglect, or exploitation.

28. **Petition.**

a. A Petition for an Adult-at-Risk Protective Restraining Order shall include:

(1) The name of the Adult-at-Risk;

(2) An allegation that:

(a) The respondent has abused, neglected, or exploited an Adult-at-Risk; or

(b) The respondent has threatened to engage in abuse, neglect, or exploitation of an Adult-at-Risk; or

(c) The respondent has interfered with an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services and, if continued, will make it difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur; or

(d) The respondent, based upon prior conduct, may interfere with an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services and if interference were to occur it would be difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur;

(3) The name, mailing address, physical address, age of the respondent, and his or her relationship to the Adult-at-Risk.

b. A supplemental document shall be filed with the Court containing the address of where the petitioner would like to receive notices from the court, the petitioner's telephone number(s), and e-mail address if available. This information shall be kept confidential.

c. A signed statement, or separate affidavit filed with the Petition, stating:

(1) In the petitioner's own words, the specific facts and circumstances of the alleged abuse, neglect, or exploitation of the Adult-at-Risk, including whether the Adult-at-Risk

believes himself or herself to be in immediate danger of further abuse, neglect, or exploitation; or

(2) The specific facts and circumstances that led the petitioner to believe the respondent has, or will likely, interfere with either an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services.

d. A list of prior civil or criminal temporary restraining orders, injunctions, or no contact orders in other jurisdictions involving both the Adult-at-Risk and the respondent.

29. **Temporary Adult-at-Risk Protective Restraining Order.**

a. An Adult-at-Risk Protective Restraining Order Petition shall be filed and served pursuant to Sections 27 and 28 above.

b. The Court may issue, upon its own motion or the motion of a party, a written, oral, or telephonic Temporary Adult-at-Risk Protective Restraining Order without notice to an alleged perpetrator when the Court finds reasonable cause to believe:

(1) That the Adult-at-Risk is in immediate danger based on credible evidence that the respondent has or is likely to interfere with an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services; and

(2) That prior notice is likely to increase the danger to the Adult-at-Risk or other family or household member(s) or will impede upon an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services.

c. The Court may grant the following relief in a Temporary Adult-at-Risk Protective Restraining Order:

(1) Order the respondent to not commit or threaten to commit further acts of abuse, neglect, or exploitation of an Adult-at-Risk; or

(2) Order the respondent to not contact, harass, stalk, telephone, or otherwise communicate with the Adult-at-Risk, either directly or indirectly; or

(3) Order the respondent to avoid the residence of the Adult-at-Risk or any other location temporarily occupied by the Adult-at-Risk, or both; or

(4) Order the respondent not to interfere with the investigation of abuse, neglect, or exploitation of an Adult-at-Risk, the provision of services to the Adult-at-Risk, or otherwise

harass or intimidate CFS workers or other individuals employed to carry out the goals of this subsection; or

(5) Order such other relief as the Court deems necessary to protect and provide for the safety of the Adult-at-Risk and any designated family or household member(s).

d. A Temporary Adult-at-Risk Protective Restraining Order is in effect until a hearing is held on the issuance of an Adult-at-Risk Protective Restraining Order pursuant to this Chapter.

e. Following entry of a Temporary Adult-at-Risk Protective Restraining Order, the Court shall:

(1) Set a date for a hearing to be held within fifteen (15) days after entry of a Temporary Adult-at-Risk Protective Restraining Order.

(a) The time for hearing may be extended upon the written consent of the parties or extended once for an additional fifteen (15) days upon the finding that the respondent was not served with a copy of the Temporary Adult-at-Risk Protective Restraining Order despite due diligence.

(2) Cause the Temporary Order to be served upon the respondent.

(3) Transmit a copy of the Temporary Order to any additional, appropriate law enforcement agencies or other agencies designated by the petitioner.

(4) The Court shall explain the contents of the Temporary Order to the Adult-at-Risk.

30. **Adult-at-Risk Protective Restraining Order.**

a. An Adult-at-Risk Protective Restraining Order Petition shall be filed and served pursuant to Sections 27 and 28 above.

b. After the hearing on the Petition, whether or not the respondent appears, if the judge finds reasonable cause to believe that neglect, abuse, or exploitation of an Adult-at-Risk has occurred, is likely to occur, or may reoccur the Court may issue a non-temporary Adult-at-Risk Protective Restraining Order.

c. The Court may grant the following relief in an Adult-at-Risk Protective Restraining Order:

(1) Grant the relief as set forth in sections 29c (1) through (3) above; or

(2) Prohibit the respondent from harassing or intimidating CFS workers or other

individuals employed to carry out the goals of this subsection; or

(3) Prohibit the respondent from intentionally preventing a CFS Adult Prevention and Protection Social Worker from meeting, communicating, or being in visual or audio contact with the Adult-at-Risk; or

(4) Order any other relief deemed necessary and consistent with the purposes of this Act or any Traditional Cultural Disposition that may be consistent with and will reinforce the customs and traditions of the community.

d. If the Court issues an Adult-at-Risk Protective Restraining Order under this section the Court shall:

(1) Cause the non-emergency Order to be served on any of the parties who were not present;

(2) Make reasonable efforts to insure that the Adult-at-Risk Protective Restraining Order is understood by the Adult-at-Risk and the respondent, if present; and

(3) Transmit a copy of the Adult-at-Risk Protective Restraining Order to any additional appropriate law enforcement agencies or other agencies designated by the Adult-at-Risk.

e. An Adult-at-Risk Protective Restraining Order issued pursuant to this section is effective according to its terms, but for not more than five (5) years.

(1) An Adult-at-Risk Protective Restraining Order may be renewed or rescinded by the Court prior to expiration pursuant to this chapter.

31. **Request to Modify Order by Respondent Due to Lack of Notice.**

a. The respondent may request modification of an Adult-at-Risk Protective Restraining Order where he or she can show by a preponderance of the evidence that he or she did not receive adequate notice of the hearing for an Adult-at-Risk Protective Restraining Order.

b. Upon receiving the respondent's request, the Court shall set a hearing as soon as practicable, but not later than fifteen (15) days after the next day on which the Court is in session following the filing of the respondent's request. The Court Clerks shall send notice to the petitioner that the respondent is seeking a modification of the order.

c. The purpose of the hearing shall be for the Court to consider whether any less restrictive alternatives may be appropriate under the circumstances. The Court may modify an Order where the Order causes an unreasonable hardship upon the respondent, provided that the safety of the

Adult-at-Risk or any family or household member protected by the Order is not jeopardized and remains the primary consideration.

32. **Motion to Extend/Terminate/Modify Order.**

a. A Motion to extend, terminate, or modify an Adult-at-Risk Protective Restraining Order shall include:

(1) The name of the Adult-at-Risk;

(2) An allegation that:

(a) the respondent has abused, neglected, or exploited an Adult-at-Risk; or

(b) the respondent has threatened to engage in abuse, neglect, or exploitation of an Adult-at-Risk; or

(c) the respondent has interfered with an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services and, if continued, will make it difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur; or

(d) the respondent, based upon prior conduct, may interfere with an Adult-at-Risk protection investigation or the delivery of Adult-at-Risk protective services and if interference were to occur it would be difficult to determine whether abuse, neglect, or exploitation occurred or is likely to reoccur.

(3) The name, mailing address, physical address, age of the respondent, and his or her relationship to the Adult-at-Risk.

b. If the respondent is filing a Motion the Court Clerk shall send notice to the petitioner that the respondent is seeking a modification of the Order.

c. A signed statement or separate affidavit filed with the Motion stating in the movant's own words, the specific facts and circumstances that lead the movant to believe an extension, termination, or other modification(s) is warranted.

d. After the hearing on the Motion, whether or not the non-movant appears, if the judge finds reasonable cause to believe that a modification, termination, or extension is necessary, the Court shall:

(1) Cause the modified Order, or Termination Order, to be served on any of the parties who were not present;

(2) Make reasonable efforts to insure that the modified Adult-at-Risk Protective

Restraining Order is understood by the Adult-at-Risk and the respondent, if present; and

(3) Transmit a copy of the modified Adult-at-Risk Protective Restraining Order, or Termination Order, to any additional appropriate law enforcement agencies or other agencies designated by the Adult-at-Risk.

CHAPTER VIII- CONTEMPT AND SEVERABILITY

33. **Disobedience – Contempt.**

a. Any person summoned as herein provided, whom, without reasonable cause fails to appear may be proceeded against for contempt of court pursuant to the Ho-Chunk Nation Contempt Ordinance and the Court may cause a bench warrant to be issued to produce such a person in Court.

b. No one attending or testifying at an Adult-at-Risk Protection proceeding shall reveal information about the proceeding unless ordered to do so pursuant to a Court Order. Any person who violates this provision shall be subject to civil penalty of up to $100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Nation, the person shall be subject to appropriate disciplinary action as allowed in the Nation's Employment Relations Act, 6 HCC § 5.

c. Harassment and intimidation of judicial officers, Department of Social Services staff, service processors, guardians ad litem, witnesses, and attorneys who are employed to carry out the goals of this Act may be grounds for contempt. Such behavior shall be classified as an obstruction of the authority, process, or order of the Court.

34. **Severability.** If any part or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act.